

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 10-81:

ROBERT CHARLES WALTWIRE,
LOCAL NO. 1784, COLUMBIA
FALLS FEDERATION OF TEACHERS,

Complainant,

- vs -

COLUMBIA FALLS SCHOOL
DISTRICT #6,

Defendant.

FINAL ORDER

* * * * *

No exceptions having been filed, pursuant to ARM 24.26.215,
to the Findings of Fact, Conclusions of Law and Recommended
Order issued on September 14, 1981, by Hearing Examiner Jack H.
Calhoun;

THEREFORE, this Board adopts that Recommended Order in this
matter as its FINAL ORDER.

DATED this 30 day of October, 1981.

BOARD OF PERSONNEL APPEALS

By John Kelly Addy
John Kelly Addy
Chairman

* * * * *

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy
of this document was mailed to the following on the 2 day
of November, 1981:

Robert C. Waltwire
411 2nd Avenue West
Columbia Falls, MT 59912

Jonathan B. Smith, Deputy
Flathead County Attorney
Flathead County Courthouse
Kalispell, MT 59901

Robert J. Souhrada, Superintendent
School District No. 6
Box 1259
Columbia Falls, MT 59912

Imper Jackson

BEFORE THE BOARD OF PERSONNEL APPEALS

In the matter of unfair labor practice No. 10-81:

Robert Charles Waltmire	}	
Local No. 1784, Columbia Falls	}	
Federation of Teachers,	}	FINDINGS OF FACT,
Complainant,	}	CONCLUSION OF LAW
vs.	}	AND
Columbia Falls School	}	RECOMMENDED ORDER
District No. 6,	}	
Defendant.	}	

* * * * *

INTRODUCTION

This unfair labor practice charge was filed by Complainant on March 2, 1981 and alleged that Defendant had violated 39-31-401(4) MCA by under utilizing him in his capacity as a substitute because he had filed a petition with this board. A hearing was conducted in Columbia Falls on April 29, 1981 under authority of 39-31-406 MCA. Mr. Waltmire represented himself, the School District was represented by Mr. Jonathan B. Smith.

ISSUE

The question raised by this charge is whether Defendant discriminated against Mr. Waltmire because he engaged in activities protected by 39-31-401(4) MCA.

FINDINGS OF FACT

Based on the substantial evidence on the record, including the sworn testimony of witnesses and the parties' stipulated facts, I find as follows:

1. Mr. Waltmire moved to Columbia Falls in December of 1978 and began substitute teaching for School District No. 6 in January of 1979. During six months of that year he earned approximately \$550.00. The pay for substitutes at that time was \$25.00 per day. During the school year which began in September of 1979 he earned about \$450.00 at \$25.00 per day and, in November of 1979, at \$32.50 per day. During

2 this matter, he was called for substitute duty once when he
3 was unavailable. He has been hired as a substitute on two
4 other occasions during that period.

5 2. In the fall of 1979 Mr. Waltwire requested that
6 the School Board negotiate with him over pay for substitute
7 teachers. The Board did not negotiate with him but instead
8 referred him to the Board of Personnel Appeals for the
9 proper procedures. The School Board raised substitute pay
10 to \$32.50 per day effective November 1979.

11 3. On February 10, 1980 he talked to Mr. Souhrada,
12 Superintendent of Schools, who advised him to contact the
13 Board of Personnel Appeals regarding procedures for organizing
14 employees into a union. He filed a petition with this Board
15 on March 14, 1980 in an attempt to organize substitute
16 teachers. Since that time he has been active in getting pay
17 raises for substitutes.

18 4. In his organization efforts he had no difficulty
19 getting a list of about 30 names from the Superintendent of
20 persons who worked as substitutes for the District. No one
21 ever threatened him during his attempts to organize his
22 fellow substitutes.

23 5. The call to Mr. Waltwire for substitute duty when
24 he was not available was made before March 2, 1981; the two
25 occasions upon which he did substitute were after that date.

26 6. The hiring of substitutes is done by the individual
27 school principals in the District, not by the Superintendent.
28 The principals use a list of names furnished by the Superin-
29 tendent. Mr. Waltwire's name is currently on that list.
30 None of the principals were told not to hire him.

31 7. The pay raise given substitutes in November of
32 1979 caused more qualified persons to be placed on the
substitute list. During the 1980-81 year there were over 50

2
3 8. The principal of the high school, where Mr. Waltmire
4 primarily substitutes, utilizes those persons on the list
5 based on the recommendation of his staff. One teacher on
6 the staff requested that Mr. Waltmire not be brought back
7 into a particular class because he believed the students did
8 not respond well to him. Others on the teaching staff at
9 the high school have commented that they prefer someone
10 other than Mr. Waltmire.

11 DISCUSSION

12 Section 39-31-401(4) MCA prohibits public employers from
13 discharging or otherwise discriminating against an employee
14 because he signs or files an affidavit, petition or complaint
15 or gives information or testimony under the Act. Section
16 8(a)(4) of the National Labor Relations Act is identical to
17 the Montana proscription. Because of the similar language
18 of the two acts, the Montana Board of Personnel Appeals has
19 looked to the National Labor Relations Board precedent for
20 guidance in interpreting title 39, chapter 31.

21 The leading case, at the federal level, interpreting
22 Section 8(a)(4) of the NLRA is NLRB v. Scrivenner, 405 U.S.
23 117, 79 LRM 2587 (1972). The U.S. Supreme Court ruling
24 there was that an employer's discharge of employees who gave
25 written statements to an NLRB investigator, but who had not
26 filed a charge or testified at a formal hearing, constituted
27 a violation of the Act. The Court went on to state, "The
28 Act's reference in Section 8(a)(4) to an employee who has
29 filed charges or given testimony, could be read strictly and
30 confined in its reach to formal charges and formal testimony.
31 It can also be read more broadly. On textual analysis
32 alone, the presence of the preceding words 'to discharge or
otherwise discriminate' reveals, we think, particularly by

afford broad rather than narrow protection to the employee."

In C & W Super Markets, Inc. v. NLRB, 98 LRRM 3311 (1978) the U.S. Court of Appeals for the 7th Circuit upheld an NLRB finding that an employer violated Sections 8(a)(4) of the LMRA when it reduced three employees' working hours, despite the employer's contention that the reductions were made because of the employees' decline in performance, because the evidence established that the reduction was made because of employees' union activities and, in the case of one employee, because he testified against the employer at an NLRB hearing on a representation matter.

In order to promote the purpose of the Act and to provide public employees with an open channel to this Board, the federal courts' interpretation of the LMRA should be adopted in Montana; however, the present case does not furnish a factual circumstance under which such a policy could be set forth. The record contains no evidence that Mr. Waltire's hours as a substitute were reduced because he filed a petition with the Board or because he was engaged in other protected activity. He, of course, testified that he felt his hours were reduced for that reason; however, there was nothing placed in evidence to corroborate his testimony. Obviously, he believed he had been discriminated against because of his activities as evidenced by the fact he filed this unfair labor practice charge. It takes more than his belief, however, to prove that the School District discriminated against him because he filed a petition with this Board and was attempting to organize substitutes. All inferences which could possibly be made from the fact that his hours as a substitute were decreased after the 1979-80 school year were refuted by the testimony of the high school principal and other witnesses. The reasons

2 (1) it is now easier to get qualified substitutes because
3 there are more names on the list used by the principal, and
4 (2) there have been negative reactions from the staff regarding
5 his teaching.

6 As admirable as Mr. Walmire's efforts were in getting
7 some attention for his fellow substitutes in the form of an
8 increased rate of pay granted by the Board and in spite of
9 the fact that he sincerely believed he had been discriminated
10 against, I am compelled to conclude that the School District
11 did nothing to thwart his organization efforts nor did it
12 reduce the number of times he was called because he filed a
13 petition here.

14 CONCLUSION OF LAW

15 Defendant Columbia Falls School District No. 6 nor its
16 agents, officials or representatives violated 39-31-401(4)
17 or 39-31-401(1) MCA.

18 RECOMMENDED ORDER

19 Unfair labor practice No. 10-81 is dismissed.

20 NOTICE

21 Exceptions to these findings of fact conclusions of law
22 and recommended order may be filed within twenty days of
23 service thereof. If no exceptions are filed, the recommended
24 order will become the final order of the Board of Personnel
25 Appeals.

26 Dated this 14th day of September, 1981.

27
28 BOARD OF PERSONNEL APPEALS

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30 
31 Jack H. Calhoun
32 Hearing Examiner